

**Department of Legislative Services**  
Maryland General Assembly  
2019 Session

**FISCAL AND POLICY NOTE**  
**Third Reader**

Senate Bill 129

(Senators Lee and Smith)

Judicial Proceedings

Judiciary

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**Criminal Law - Continuing Course of Conduct With a Child - Unit of  
Prosecution**

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This bill establishes that for purposes of prosecution for continuing course of unlawful sexual conduct under § 3-315 of the Criminal Law Article, violations that occur in separate periods of 90 days or more must be considered separate violations.

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**Fiscal Summary**

**State Effect:** General fund expenditures are not affected in the short term but likely increase minimally in the out-years due to the bill's impact on duration of incarceration, as discussed below. Revenues are not affected.

**Local Effect:** The bill does not materially affect local government finances or operations.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A person may not engage in a continuing course of conduct which includes three or more acts that constitute violations of § 3-303 (rape in the first degree), § 3-304 (rape in the second degree), or § 3-307 (sexual offense in the third degree) of the Criminal Law Article, or violations of § 3-305 (first-degree sexual offense) or § 3-306 (second-degree sexual offense) of the Criminal Law Article as the sections existed before October 1, 2017, over a period of 90 days or more, with a victim who is younger than age 14 at any time during the course of conduct. A violator is guilty of a felony, punishable by imprisonment for up to 30 years. A sentence imposed for this

violation may be separate from and consecutive to or concurrent with a sentence under § 3- 602 (sexual abuse of a minor) of the Criminal Law Article.

In determining whether the required number of acts occurred, the trier of fact (1) must determine only that the required number of acts occurred and (2) need not determine which acts constitute the required number of acts.

A person may not be charged with a violation of §§ 3-303, 3-304, or 3-307 involving the same victim in the same proceeding as a violation for a continuing course of conduct unless the other violation charged occurred outside the time period that was charged for the continuing course of conduct violation. A person may not be charged with a violation of §§ 3-303, 3-304, or 3-307 involving the same victim unless the violation charged occurred outside the time period charged for the continuing course of conduct violation.

**Background:** In *State v. Bey*, 452 Md. 255 (2017), the Maryland Court of Appeals held that § 3-315 of the Criminal Law Article is ambiguous as to whether separate convictions and sentences can be obtained for multiple uninterrupted 90-day intervals of a continuing course of conduct. According to the court, because there are multiple competing reasonable interpretations of the statute, the rule of lenity mandates that the statute be construed as to prohibit a criminal defendant from being subject to multiple punishments for continuing course of conduct with a child under § 3-315.

The Judiciary advises that there were 150 cases filed and 7 guilty dispositions under § 3-315 in the State's circuit courts during fiscal 2017. The Department of Public Safety and Correctional Services advises that, in fiscal 2017, it conducted intake on five inmates sentenced for continuing course of conduct. Two of the inmates carried two offenses each, with the second sentence being concurrent. The average length of sentence was 18 years. The Division of Parole and Probation has no data showing probation intakes in fiscal 2017 for continuing course of conduct.

According to the Maryland State Commission on Criminal Sentencing Policy (MSCCSP), a review of the Maryland State Sentencing Guidelines Database indicates that MSCCSP received information on nine individuals sentenced in the State's circuit courts during fiscal 2018 for continuing course of conduct.

**State Expenditures:** General fund expenditures increase minimally in the out-years as a result of the bill's impact on incarceration penalties due to people being committed to State correctional facilities for longer periods of time. The bill has the potential to significantly increase the overall length of sentence for an individual convicted of continuing course of conduct. Any such impact depends on (1) the frequency with which individuals face additional charges and are convicted of additional counts of continuing course of conduct as a result of the bill; (2) the lengths of the sentences imposed; and (3) judicial discretion

as to whether sentences should be served consecutively or concurrently. However, given the number of individuals convicted each year of this offense, the maximum sentence under existing statute of 30 years, and the fiscal 2017 average sentence of 18 years, the overall impact of the bill on State incarceration expenditures is expected to be minimal and deferred to future years.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,800 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

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### **Additional Information**

**Prior Introductions:** SB 316 of 2018, a similar bill, passed the Senate with amendments and received a hearing in the House Judiciary Committee, but no further action was taken.

**Cross File:** HB 712 (Delegates Crutchfield and Atterbeary) - Judiciary.

**Information Source(s):** Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - January 28, 2019  
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Analysis by: Amy A. Devadas

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510